IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEALS Nos. 496/2000, 498/2000 to 514/2000
in
SPECIAL CIVIL APPLICATIONNo 7902 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA
Versus
KANKUBEN WD/O SARDAR GHISASINGTEJSING

Appearance:
MRS SIDDHI D TALATI for Appellants

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/08/2000

ORAL JUDGEMENT (Per: R.K. Abichandani,J.)

1. This group of appeals raise a common challenge

against the common judgment and order dated 4th May, 2000 in a group of petitions rejecting the petitions which were filed against the award made by the Labour Court by which the Labour Court allowed the claims made by the workmen in the Recovery Application filed under Sec.33C(2) of the Industrial Disputes Act in respect of certain overtime allowance which according to them was payable to them in view of what is called as on and off duty for taking out and bringing in locomotives from the shed as was required to be done for the purpose of operating them at and from different stations.

2. The learned Single Judge found that the Labour Court had on the basis of the material on record ascertained the entitlement and rightly allowed the Recovery Applications. From the award made by the Labour Court, it is clear that it had placed reliance on earlier similar proceedings in the form of Recovery Application no.19/1982 which was allowed and the award made in which was confirmed by the High Court.

3. The learned Counsel for the appellant contended that there were instructions issued under Section 71-A to 71-H of the Indian Railways Act, 1890 and the Railway Servants (Hours of Employment) Rules 1961 by the Railway Board and as per instruction no.2 of the said instructions, it was directed that the time taken by an employee in going to and coming from his residence was not to be taken into account in reckoning the hours of employment laid down in the Act. It was argued that in the earlier proceedings and before the High Court these instructions were not taken into account. It was contended that these instructions disentitled the workmen to claim any overtime allowance.

4. The Division Bench of this Court in Special Civil Application no.3203/84 in respect of the employees belonging to the same category to which the present employees belonged and considering the circular dated 15th November, 1961 of the Railway Administration, by which the Railway Administration sought to discontinue the overtime payment, upheld the claim made by the employees in the Recovery Application in respect of similar overtime allowance holding that time taken by the employees for reporting to different places on different dates continued to have the same nature which it had earlier, prior to the date of the circular, and that merely by providing that instead of signing "on" and "off" at Kankaria Loco Shed the employees had to sign at the respective stations to which they might be assigned on a particular day, such as, Vatva, Sabarmati, Asarva

which were 10 Kms. away from each other, there was no change in the situation and the nature of spending the time by such employees continued to be the same. It was held that mere direction regarding the formality of signing" on" and signing "off" being made at different places did not bring about any material change in the situation and did not affect the actual working of the employee their duty hours. It was in terms held that by this process, the duty hours were not reduced to eight and therefore the Labour Court was fully justified in holding that the workmen continued to be entitled to the payment of overtime allowance as it was being done prior to 1961. The Division Bench also in terms negatived the contention of the Railways that such a claim could not have been entertained under the provisions of Sec.33C(2) of the Industrial Disputes Act. In our opinion, the matter is squarely covered by the said decision of the Division Bench and the learned Single Judge was right in holding that there was no warrant for interference with the award made by the Labour Court in these matters. The contention that the instructions Paragraph 2 of the orders issued by the Railway Board to the effect that the time taken by the employee in going to and coming from his residence is not to be taken into account for reckoning the hours of employment were not taken into account, and therefore, the statutory direction not having been considered, the judgment ought to be taken to be per incuriam is wholly ill-founded. The said direction of the Railway Board did not deal with overtime allowance and only provided that the time taken in journey by an employee in going to and coming from his residence will not be reckoned while computing the hours of employment. That never was the question in issue. This was a question of what is called "on" and "off" duty for the purpose of attending to the locomotives which are being taken to different stations from the shed and the time in respect of which overtime allowance was given fell outside the hours of employment. Therefore, the directions contained in paragraph 2 had no application to the present case and were therefore rightly not taken into account for considering the question of over time allowance being discontinued.

5. In this view of the matter, we find no valid reason to interfere with the impugned order and all these appeals are summarily dismissed.

(R.K. Abichandani, J.)

(A.K.Trivedi,J.)

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